

REMARKS

Applicant expresses appreciation to the Examiner for consideration of the subject patent application. This amendment is in response to the non-final Office Action mailed May 12, 2008, in which the drawings were objected to and claims 26-49 were rejected.

Claims 26-49 remain in the application. Claims 1-30 were originally presented. Claims 1-25 were cancelled and claims 31-49 added in a preliminary amendment prior to examination. Applicant proposes to amend claims 31, 33, 46 and 47, and respectfully requests reconsideration of the application as amended herein. The subject matter of the amendments is found in the original specification and drawings, and no new matter has been added.

***Informalities***

1. Drawing Objections.

The drawings were objected to by the Examiner under 37 CFR 1.83(a) for failing to show every feature of the invention specified in the claims. Appropriate correction has been made to the specification to align the elements in the claims, specifically “a pass-through portion” and “a binding portion”, with the features illustrated in the original drawings and described in the written description. All revisions are made for the purposes of improving clarity and explanation, and no new matter has been added.

2. Specification Objections.

The specification was objected to by the Examiner as failing to provide proper antecedent basis for the claimed subject matter, namely, for “a binding portion” recited in claims 46 and 47. Appropriate correction has been made to the specification to align the elements in the claims with the features illustrated in the original drawings and described in the written description. Please see remarks above.

***Claim Rejections -- 35 U.S.C. § 102***

3. Anticipation rejection based on U.S. Patent No. 4,889,321 to Burns.

Claims 26-30, including independent claim 26, stand rejected under 35 U.S.C. § 102(b) as

being anticipated by U.S. Patent No. 4,889,321 to Burns (“Burns”). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that, under 35 U.S.C. § 102(b), independent claim 26 includes subject matter which is allowable over Burns, since Burns fails to disclose each and every element as set forth in the independent claim. More specifically, Burns fails to disclose a front door plate which is a separate and distinct element from a rear door plate, as recited in claim 26. Additionally, Burns fails to disclose a locking extension member having a middle portion and “opposite free end portions extending from the middle portion,” also recited in claim 26.

As illustrated in FIGS. 1 and 2, Burns discloses a single cover door 80 for a winch mechanism 20 that is sized to be disposed within the opening 15. (*see* Burns; Col 3, lines 29-42). The removable cover door 80 fits inside the opening 15 and abuts against an un-numbered inner frame that has been attached to the inside of the flagpole housing 10. As can further be seen in the top view of FIG. 2, the cover door fits flush within the opening 15. Also shown in FIG. 1 is a security means 100 used to secure the cover door to the housing. The security means 100 is a link chain which is attached at one end to the cover door 80 and at the other end to a top tab structure projecting downward from the top edge of the opening of the inner frame. FIG. 1 also illustrates a latch key locking mechanism 90 with a locking bar which extends downward to engage a lower tab structure projecting upward from the bottom edge of the inner frame. The locking bar locks in the vertical position against the lower tab structure to secure the cover door inside opening 15, and releases in the horizontal position to allow the door to be removed.

In contrast, independent claim 26 of the present invention recites a front door plate 220 having a back surface 222 with a radius of curvature allowing it to sit flush against, or on top of, the outer surface 224 of the flag pole or tube member. (*see* FIGS. 5-8; page 7, lines 21-26). Claim 26 further recites a separate and distinct rear door plate 230 coupled to the back surface of

the front door plate, and which is sized to be disposed within the access opening 200. Having two plates, one sized “to fit snug within the edge 202 defining the access opening 200” and the other configured to sit flush against the outer surface of the flag pole, provides a jointed contact surface which can, among other things, better seal the interior of the flag pole from the natural elements, such as wind and rain.

Independent claim 26 also recites a “locking extension member having a middle portion 252 coupled to the rear portion of the lock housing and opposite free end portions 254 extending from the middle portion.” (*see* FIGS. 7 and 8, page 8, lines 9-25). Applicant respectfully submits that a similar locking extension member having two “opposite free end portions,” as described in the specification and illustrated in the drawings, is nowhere disclosed in Burns. Therefore, Burns fails to teach both a front door plate element which is a separate and distinct from a rear door plate element, and a locking extension member having a middle portion with “opposite free end portions extending from the middle portion.” Consequently, Applicant respectfully asserts that Burns does not disclose each and every element of independent claim 26.

Additionally, Applicant submits that claims 27-30 are allowable as depending from allowable independent claim 26.

Applicant respectfully asserts that dependent claims 29 and 30 are further allowable over Burns, as Burns fails to teach a locking extension member positioned so that the free ends are disposed horizontally against the inner surface of the flag pole with an interference fit, and disposed vertically to prevent interference with the inner surface of the flag pole. Neither the security means 100 nor the latch key locking mechanism 90 disclosed in Burns (*see* FIG. 1) operates to create in interference fit with the inner surface of the flag pole when placed in a horizontal position, or prevents an interference fit when place in a vertical position. Therefore, dependent claims 29 and 30 are further allowable over Burns.

Based on the foregoing, Applicant submits that the prior art cited by the Examiner does not anticipate claims 26-30 of the present invention, and respectfully requests that the claims of the application be reconsidered and that the rejections under 35 U.S.C. § 102 be withdrawn.

***Claim Rejections -- 35 U.S.C. § 103***

4. Obviousness rejection based on U.S. Patent No. 2,377,219 to Ellis in view of U.S. Patent No. 269,399 to Ensign.

Before discussing the obviousness rejections the standards for establishing a *prima facie* case of obviousness must be clearly satisfied. The issue under § 103 is whether the PTO has stated a case of *prima facie* obviousness. "The PTO has the burden under § 103 to establish a *prima facie* case of obviousness." *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). To satisfy this burden, the PTO must meet the criteria set out in M.P.E.P § 706.02(j):

. . . three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Moreover, the obviousness analysis must comply with the statutory scheme as explained by the Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), namely, consideration must be given to: (1) the scope and content of the prior art, (2) the differences between the prior art and the claimed invention, (3) the level of ordinary skill in the pertinent art, and (4) additional evidence, which may serve as indicia of non-obviousness.

The Supreme Court recently clarified obviousness standards by stating that "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (S. Ct. 2007).

Furthermore, "[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (S. Ct. 2007) citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006).

Applicant respectfully submits that the Office has failed to establish a *prima facie* case of obviousness in that the references fail to teach or suggest each and every element of the claims as presently amended.

Claims 31-41 and 43-49, including independent claims 31, 46 and 47, were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,377,219 to Ellis (“Ellis”) in view of U.S. Patent No. 269,399 to Ensign (“Ensign”). Applicant respectfully traverses this rejection, as hereinafter set forth.

With regard to amended independent claims 31, 46 and 47, it is respectfully submitted that the teachings of Ellis and Ensign, taken individually or collectively, fail to teach or suggest all of the claim limitations recited in the independent claims as amended herein. More specifically, the combination of Ellis and Ensign fails to teach or suggest a “wedge-shaped aperture being operatively orientated to urge said line member into said binding portion,” as specifically recited in the amended independent claims.

Firstly, Applicant submits that it is correct and proper to define an element of the present invention in functional terms. (See MPEP 2173.05(g)). Specifically, the functional language “operatively orientated to urge said line member into said binding portion,” as recited in amended independent claims 31, 46 and 47, is a functional limitation used in association with an element of the invention to define a particular capability or purpose that is served by the recited element. In *Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20, 72 USPQ2d 1001, 1006-08 (Fed. Cir. 2004). Moreover, the limitation serves to precisely define present structural attributes of interrelated component parts of the claimed assembly, namely the aperture and the line member. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976).

With regard to the prior art cited by the Examiner, Ellis teaches a hollow flagpole 11 having a ropes 14, 15 drawing through the center of pole and attached to a cleat 25 mounted at the lower end of the flag pole. (see Ellis, Col. 2, lines 27-49). As illustrated in FIG. 3, the cleat may be mounted to the inside wall of the pole and situated directly opposite locked door 29 for convenient manipulation. The cleat 23 of Ellis does not have an aperture operatively oriented to

urge said line member into a binding portion of the aperture, but instead comprises the traditional cleat design having opposing projections or branches around which the rope or line is wrapped.

Ensign teaches a cleat for lines upon small crafts, yachts and vessels, “wherein it may become necessary to let go instantaneously.” (see Ensign; FIGS. 102; Lines 12-15). The cleat of Ensign is comprised of a cylinder A having a tapering slit D cut at the lower end, which slit is “large enough to receive the rope or line intended to be fastened, which has been passed down through the cylinder and drawn into the tapering slit at the bottom...” (Lines 23 – 26). Thus, the orientation of the tapering slit D with the respect line of travel of the rope or centerline of the cylinder A is substantially parallel, so that that the rope must be manually drawn into the tapered slit in order to be captured by the cleat. Furthermore, to release the rope from the cleat, “a slight jerk downward takes the rope out of the slit immediately, when it becomes free.” Thus, Ensign does not teach a wedge-shaped aperture operatively orientated to urge the line or rope into the binding portion of the aperture. To the contrary, removing the rope from the tapering slit D allows for the free movement and immediate release of the rope through the cleat.

It is therefore submitted that amended independent claims 31, 46 and 47 are allowable over Ellis and Ensign, as neither reference, taken together or separately, teaches or suggests a wedge-shaped aperture being operatively orientated to urge said line member into said binding portion, as is recited in the amended independent claims. Consequently, since both cited references fail teach or suggest each and every element of the claimed invention, it is respectfully submitted that under 35 U.S.C. § 103(a) the subject matter recited in independent claims 31, 46 and 47, as amended herein, is allowable over Ellis in view of Ensign.

Claims 32-41, 43-45 and 48-49 are each allowable as for depending, either directly or indirectly, from their respective allowable base claims.

Based on the foregoing, Applicant respectfully submits that claims 31-41 and 43-49, including independent claims 31, 46 and 47 as amended herein, are allowable, and urges the Examiner to withdraw the rejection.

5. Obviousness rejection based on U.S. Patent No. 2,377,219 to Ellis in view of U.S. Patent No. 269,399 to Ensign and further in view of Japanese Patent Application Publication No.

JP 20012244602 to Taharaya.

Claims 42 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,377,219 to Ellis (“Ellis”) and U.S. Patent No. 269,399 to Ensign (“Ensign”) and in further view of Japanese Patent Application Publication No. JP 20012244602 Taharaya (“Taharaya”). Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 42 is allowable as depending from an allowable base claim as discussed hereinabove, and urges the Examiner to withdraw the rejection.

Based on the foregoing, Applicant submits that the prior art does not render claims 31-49 of the present invention obvious, particularly as amended to recite more specific and definite limitations. As such, Applicant respectfully requests that the claims of the application be reconsidered and that the rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Based on the foregoing, Applicant respectfully submits that the deficiencies in the application have been corrected and that the proposed claims are neither anticipated nor rendered obvious by the prior art references cited by the Examiner. As such, Applicant believes that the application is now in a condition for allowance, and action to that end is respectfully requested.

If any impediments to the allowance of this application for patent remain after the above amendments and remarks are entered, the Examiner is invited to initiate a telephone conference with the undersigned attorney of record.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 20-0100.

DATED this 12th day of September, 2008.

Respectfully submitted,

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